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OFFICE OF PETITIONS

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| In re Application | : |
| Ronald M. Evans | : |
| Application No. 09/840,008 | : DECISION ON APPLICATION |
| Filed: April 20, 2001 | : FOR PATENT TERM ADJUSTMENT |
| Atty Docket No. SALK 2270-4 | : |

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705," filed February 17, 2005.¹ Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to one hundred twenty-four (124) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein. However, Applicant's request that an additional PTO delay of one hundred eighty-five (185) days be assessed is being **HELD IN ABEYANCE** until after the actual patent date.

Applicant is given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicant may seek such reconsideration without payment of the fee if the sole reason for seeking reconsideration under 37 C.F.R. § 1.705(d) is that the patent failed to issue within three years. A copy of this decision should accompany applicant's written request for reconsideration.

¹ This application for patent term adjustment was timely filed, as it was filed after the mailing of the Notice of Allowance and together with the payment of the issue fee.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **zero (0) days** (154 days of PTO delay and 285 days of applicant delay). A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 18, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days.

Applicant specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred fifty-four (154) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicant's delay of one hundred fifty-eight (158) days, thirty-six (36) days, and ninety-one (91) days, all pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and ninety-three (93) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustments of 154, 158, 36, and 91 days have been reviewed and found to be correct. The adjustment of 93 days is at issue.

The adjustment of 93 days has been found to be incorrect. Applicant filed an amendment on April 20, 2004. In response, the Office mailed a Notice of Non-Responsive Amendment on June 25, 2004 and again on July 1, 2004. Applicant timely filed an Amendment on July 22, 2004, in which he pointed out his belief that the Notice of Non-Responsive Amendment was erroneous. In reply, the Office mailed a Notice of Allowance and a Notice of Allowability on November 18, 2004. The Notice of Allowability was silent as to Applicant's contention that the Notice of Non-Responsive Amendment was erroneously mailed.

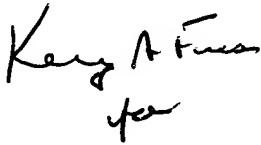
In view thereof, it is concluded that Applicant should not have been assessed ninety-three (93) days of delay pursuant to 37 C.F.R. § 1.704(c)(7).

Accordingly, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **zero (0) days** (154 days of PTO delay and 285 days of applicant delay).

The \$200 fee set forth in 37 C.F.R. 1.18(e) has been charged to Deposit Account No. 50-0872, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571) 272-3207.

A handwritten signature in cursive script, appearing to read "Karin Ferriter".

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy